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EMERGENCY ASSISTANCE FOR THE ECONOMIC AND SOCIAL REHABILITATION OF LIBERIA

Report of the Secretary-General

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* A/46/150.

I. INTRODUCTION

1. By its resolution 45/232 of 21 December 1990, the General Assembly, inter alia,

> "1. Appeals to the international community to render its support by providing all necessary assistance for the economic and social rehabilitation of Liberia;
>
> "2. Appeals to all Member States to make voluntary contributions for rehabilitation efforts;
>
> "3. Requests the Secretary-General, in close cooperation with the appropriate authority in Liberia, to coordinate the efforts of the United Nations system to assist that country in its emergency relief, rehabilitation and reconstruction efforts, to mobilize resources for the implementation of the necessary programmes and to keep the international community informed of the needs of the country;
>
> "4. Also requests the Secretary-General ... to report to the General Assembly at its forty-sixth session on the implementation of the present resolution."

2. The present report describes the emergency assistance activities carried out by the United Nations system in Liberia under the terms of resolution 45/232. The response of Member States to the appeal directed to them in the resolution is also reviewed. The question of emergency humanitarian assistance to Liberian refugees in the neighbouring countries is addressed in a separate report of the Secretary-General (A/46/432) prepared in accordance with General Assembly resolution 45/139 of 14 December 1990.

3. Every effort is being made to ensure a coordinated United Nations response to all needs arising from the Liberian crisis. The United Nations Special Coordinator for Emergency Relief Operations, based at Monrovia, is responsible for coordinating all institutional and operational arrangements for relief programmes and other humanitarian activities in Liberia. The Office of the Special Coordinator includes representatives of the World Food Programme (WFP), the United Nations Children's Fund (UNICEF), the World Health Organization (WHO) and the United Nations Development Programme (UNDP). The Office of the United Nations High Commissioner for Refugees (UNHCR) is responsible for field coordination at the subregional level with respect to refugees and returnees. United Nations resident coordinators in the host countries are responsible for national programmes and activities with respect to affected host country populations. At United Nations Headquarters, overall responsibility for coordinating the relief programmes is assigned to the Office of the Under-Secretary-General for Special Political Questions, Regional Cooperation, Decolonization and Trusteeship.

II. INITIAL RESPONSE

4. The civil conflict that raged across Liberia during most of 1990 completely disrupted the country's social, administrative and economic infrastructure. Over 1 million Liberians (more than half the country's population) were forced to abandon their homes and their usual sources of livelihood. Some took refuge in neighbouring countries; others moved from one part of the interior to another; still others streamed into the capital of Monrovia seeking protection from fighting in the countryside.

5. The Office of the United Nations Disaster Relief Coordinator (UNDRO) fielded a needs assessment mission to Nimba county in February 1990, which led to the installation of a team of seven United Nations volunteers and an UNDRO team leader in early March. Food and medical supplies were distributed from March to May, but owing to increasing security problems the operation was continuously scaled down and in early June the entire United Nations system had to be evacuated from Liberia.

6. In July 1990, the Secretary-General, in view of the gravity of the situation and the need for a coordinated United Nations system response, appointed the Special Coordinator for Emergency Relief Operations in Liberia, with a mandate to coordinate in the field the work of all United Nations agencies involved in the provision of humanitarian assistance to the affected population.

7. During the period from June to October 1990, relief assistance was provided on a limited scale by non-governmental organizations at Monrovia and other parts of the country. The UNDRO team was assigned to the Office of the Special Coordinator for Emergency Relief Operations in Liberia (UNSCOL), temporarily located at Conakry.

8. As the fighting subsided in November 1990 the United Nations presence was re-established at Monrovia and relief operations were resumed from a support base at Freetown. UNDRO initially provided logistical support, including an air link to Monrovia by chartered aircraft, a communications network supported by the Swiss Disaster Relief Unit, and sea transport in cooperation with WFP.

9. UNDP, which finances the Office of the Special Coordinator and related logistics, also provided $US 1.6 million from Liberia indicative planning figure funds to support United Nations relief operations at Monrovia pending the launching of an international appeal in early December 1990 (see below) and the expected donor response.

III. MONROVIA RELIEF OPERATIONS

10. On 5 December 1990, the Secretary-General launched a US$ 14.4 million appeal focused on the critical first months of a resumed emergency relief operation in the Monrovia area. The priorities of the programme included providing general food rations and supplementary food for malnourished

children, conducting an emergency child immunization programme, establishing a self-contained field hospital to meet critical medical needs, restoring reliable electrical power and rehabilitating the water treatment plant.

11. In order to confront those challenges in an organized manner, a coordination committee was set up under the auspices of the Special Coordinator, comprising representatives of all United Nations agencies, non-governmental organizations and other agencies participating in the Monrovia relief effort. Subcommittees were established to deal with food and nutrition; health and medical care; water and sanitation; education; children in difficult circumstances; logistics; and security and communications.

12. The logistical basis for the Monrovia operation has been progressively built up with the reopening of the Spriggs Payne airport and establishment of fuel supplies, port facilities and internal and external communications links. A chartered plane has been making daily flights between Freetown and Monrovia, while sea vessels arrive periodically carrying food and relief supplies.

13. The food assistance programme is carried out by WFP in collaboration with various international relief agencies and the Special Emergency Life Food programme (SELF), a Liberian initiative. It aims to provide a food basket composed of rice, oil and beans or meat/fish (as available) to all registered households in the Monrovia area. The final distribution is carried out by SELF at over 140 distribution centres staffed by volunteer teams elected by each neighbourhood. The number of people registered for food assistance has increased steadily since the inception of the programme, reaching over 600,000 in July 1991. Workshops have been organized in all 16 distribution zones to recommend means of improving the reception, storage and transportation of foodstuffs.

14. UNICEF, working in close cooperation with WHO and a range of international and national non-governmental organizations, has assumed lead responsibility in the non-food sector. The health and medical facilities established or reconstructed since the appeal was launched include supplementary feeding centres, day-care centres, health centres, first-aid posts, maternal-child clinics and hospitals. Those facilities provide supplementary feeding to some 15,000 children and conduct over 5,000 medical consultations per week. A measles vaccination campaign and a series of nutritional surveys have also been carried out.

15. In the field of water and sanitation, efforts have been concentrated on rehabilitating the water treatment plant, sewage treatment facilities and electrical plant supplying power to those installations.

16. A problem of special humanitarian concern has been the presence of a large number of orphaned and abandoned children in Monrovia. UNICEF has joined with a number of non-governmental organizations to establish shelters for the children, take life histories and promote family reunification, and establish literacy and vocational training programmes.

17. The relief efforts of the United Nations system and non-governmental organizations have achieved a significant degree of success. For example, nutritional surveys indicate that between December 1990 and May 1991 the malnutrition rate for those under five years old in the Monrovia area fell from 35 per cent to about 5 per cent. The eighth general food distribution for the population of Monrovia has been completed. Food-for-work activities, day-care centres, school feeding programmes, the partial restoration of water, electricity and sanitation services, programmes for children in difficult circumstances and a wide range of health care activities have all made a major contribution to the welfare of people in the greater Monrovia area. The challenge now is to solidify those gains and to extend the effort to all parts of the country.

IV. COUNTRY-WIDE PROGRAMME

18. At the time of the appeal for the greater Monrovia area, it was recognized that Liberians living in the interior had also suffered deprivation. While security conditions did not initially permit the establishment of a direct United Nations humanitarian assistance programme, limited assistance was provided through and by non-governmental organizations operating in the area.

19. Following consultations with the various parties concerned, it was agreed that the United Nations should expand the emergency relief programme to cover all parts of the country. In order to formulate a country-wide programme, joint United Nations/non-governmental organization assessment missions visited all counties in Liberia during the period from 28 May to 7 June 1991. The missions, organized by the Office of the Special Co-ordinator for Emergency and Relief Operations, included representatives of UNICEF, UNHCR, WFP, the Food and Agriculture Organization of the United Nations (FAO), WHO and UNSCOL as well as Médecins sans Frontières/Belgium (MSF/B), Catholic Relief Services (CRS) and OXFAM.

20. Details of the assessment missions, including their final reports, have been incorporated in a separate information note, which can be obtained from the Secretariat upon request. The results of the assessment missions provided the basis for elaborating a country-wide emergency assistance programme for the period from July 1991 to July 1992. That programme, at a cost of $US 135.6 million, was outlined in a consolidated appeal issued by the Secretary-General on 24 July 1991. The main elements of the programme are summarized in paragraphs 23 to 56, below.

21. The United Nations has consulted with all parties concerned and reached agreement on the following principles, which will govern humanitarian relief in Liberia:

(a) The basic purpose of the programme is to respond to the urgent needs of all Liberian people, wherever located, with particular concern for vulnerable groups;

(b) International assistance under the programme is to be neutral and, to that end:

(i) There will be operational contacts with all relevant parties;

(ii) Logistic arrangements will be based on considerations of efficiency and effectiveness;

(iii) The principle of transparency will be maintained;

(c) All parties undertake to guarantee the security of relief workers and supplies, and access to distribution sites and beneficiaries;

(d) Non-governmental organizations, national and international, will play a role in the implementation of the programme both in mobilizing resources and in distributing relief supplies;

(e) Arrangements will be made for the monitoring of relief supplies to ensure that they reach those in need.

22. It is emphasized that a sense of personal security by the Liberian people, including freedom of movement, is essential to the success of the programme.

A. Food aid

23. According to the inter-agency assessment missions of May/June 1991, the war, the destruction of crops in the field, the pilferage of food stocks, population movements and general insecurity significantly reduced last year's harvest and exhausted the already meagre stocks. Farmers, living on the verge of starvation, consumed whatever was available, including rice seeds. That was reflected in elevated levels of malnutrition, especially in areas of continuing conflict (Grand Gedeh county) and in regions with a high concentration of displaced persons (Cape Mount, Bomi, Margibi and Montserrado counties).

24. For the greater Monrovia area, cut off from the hinterland and without normal economic activity, food aid remains essential to the survival of its population. As next year's harvest will fall far short of requirements, food aid should also be channelled into the rural areas, in particular those with a high concentration of displaced persons. Food aid is also an important element in a wide range of other activities in the emergency relief programme (e.g. food for work, vulnerable group feeding and school feeding).

25. In his appeal of 24 July, the Secretary-General proposed, inter alia, to provide food aid to an estimated 500,000 beneficiaries at Monrovia and 600,000 displaced and vulnerable group beneficiaries outside Monrovia, as well as supplementary and intensive feeding for up to 200,000 women and children. The cost of such aid is calculated at $US 79.8 million, including transport and logistics. An additional sum of $US 577,000 is requested to restore functional capacity at the main shipping ports.

B. Health and medical care

26. The incidence of disease is very high, especially in women and children. The most prevalent afflictions are malaria, malnutrition, diarrhoea, respiratory infections, scabies, tuberculosis, sexually transmitted diseases and worm infections. The referral and logistic support systems in health care institutions have totally broken down.

27. Priority will be given initially to the provision of drugs, medical supplies and other logistical support for the expansion of health relief to cover all accessible parts of the country. Urgent intervention is required to strengthen the health care delivery system through the provision of technical assistance, reorientation of personnel and improvement of supervision at all levels; to improve health care coverage, especially for women and children, through the reopening of health facilities and progressive provision of basic services; to set up a health information system for disease surveillance and control in areas where none exists, and to strengthen the system where it is operational; to re-establish priority programmes for disease prevention and control; and to revitalize community-based health activities through community mobilization, reorientation of village health workers and traditional birth attendants, and the supply of drugs and equipment for use by those front-line health workers.

28. Among the resources to be mobilized for that purpose are eight health relief teams (each composed of a public health expert, a nurse or midwife and a dispenser) that will be deployed throughout the country. The total cost of the 12-month programme is estimated at $US 15.5 million.

C. Water and sanitation

29. In rural areas the main effect of the war has been a backlog of maintenance on hand pumps. The most effective intervention for the emergency period is to supply and fit spare parts through the deployment of maintenance teams with supplies of tools, parts and full logistics support. Immediate construction of new wells is necessary for institutions such as clinics, hospitals and centres for displaced persons and in places where wells have been abandoned because of pollution.

30. The current condition of urban water treatment plants varies and each needs to be assessed separately; some preliminary estimates of requirements have been made, however. In the meantime, a food-for-work programme will be needed and transportation will have to be provided for each of the nine centres.

31. Sanitation in the rural areas was inadequate before the war and needs to be addressed in the context of a long-term development plan. Immediate action, however, is required in areas where large numbers of displaced persons have put a severe strain on existing facilities.

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long-term recovery planning is necessary. More urgent are the critical problems facing the traditional subsector as a result of lost harvests, population movements and the disruption of the support infrastructure.

40. It will be necessary to provide farmers with farming implements in addition to rice seeds and fertilizers. In view of the critical protein deficiency, it is also proposed to initiate immediately a programme to restock poultry. Similarly, measures are needed to reactivate the small-scale fishing industry.

41. Another major concern is the need to reintegrate demobilized soldiers, especially the youth, as productive members of society. The agricultural sector will clearly play a major role in such rehabilitation and resettlement activities. Measures are also needed to support the processing of cassava into farina and gari and to reactivate the agricultural marketing system.

42. Estimated resource requirements for the agricultural sector amount to $US 10.8 million.

F. Refugees, returnees and displaced persons

43. On the basis of information obtained from relief agencies, Liberian authorities and local leaders, it is estimated that there are about 500,000 displaced persons in Liberia, mostly women and children; about 12,000 Sierra Leonean refugees in Cape Mount and Lofa counties; and about 56,000 returnees who have arrived in Liberia since January 1991.

44. Nearly all displaced persons, refugees and returnees in Liberia live in destitution, lacking the basic necessities of life. While the ultimate goal is to facilitate their return home, for the short term they need to be incorporated into the current relief programmes and supplied with basic household items. A home reconstruction assistance scheme to help heads of families to provide shelter is also proposed. Because the war has caused many women to assume responsibility for the care and maintenance of families, efforts are needed to strengthen their earnings through small-scale income-generating activities. Finally, initial preparations need to be made for the eventual return of Liberian refugees from neighbouring countries.

45. Resource requirements for urgent action in that sector are estimated at $US 13.8 million. Substantial additional resources will be required to fund the eventual repatriation and resettlement of Liberian refugees from neighbouring countries (notably Côte d'Ivoire and Guinea) and elsewhere in the subregion. An estimate of the resources required is being prepared by UNHCR and will be the subject of a future appeal.

G. Programme support and management

46. Implementation of the broad based country-wide programme described above will require cooperation and coordination of the activities of United Nations agencies, international non-governmental organizations and other external donors as well as Liberian authorities and organizations. To manage the programme and support effectively support the work of operational partners, it is essential that three small logistics bases be established outside Monrovia, and adequate transportation and communications facilities be available for the movement of personnel and goods. Requirements in the latter category include a small aircraft, runway maintenance and repair, vehicles and communication equipment.

47. Much of the success achieved to date by the international community in responding to the crisis is due to non-governmental organizations, including the locally formed SELF initiative, which is now the prime mechanism for food distribution in Monrovia. As that effort has grown, a technical unit staffed by Liberian nationals has been established to develop distribution plans, manage and store large quantities of food, monitor distribution and prepare reports to donors. Support is needed to permit the continuation of such work and its expansion to the country at large. It is also proposed to provide 15 United Nations volunteer specialists through a multisectoral umbrella project that would permit rapid recruitment in such fields as medicine and agriculture, in addition to logistics, mechanics, food monitoring and emergency coordination.

48. The funding requirements for the above-mentioned activities are estimated at $US 3 million.

49. To summarize, net resource requirements for the implementation of the emergency humanitarian assistance programme have been identified as follows:

Sector	Lead agency for the United Nations system	Estimated cost (millions of United States dollars)
Food aid	WFP	80.4
Health and medical care	WHO/UNICEF	15.5
Water supply and sanitation	UNICEF/WHO/UNDP	6.7
Education and children in difficult circumstances	UNICEF	5.4
Agricultural sector	FAO	10.8
Refugees, returnees and displaced persons	UNHCR and others	13.8
Programme support	UNSCOL/UNDP	3.0
Total		135.6

H. Other assistance

50. In addition to the activities described above, several entities of the United Nations system have informed the Secretary-General of assistance rendered to Liberians during the period under review.

51. Since the beginning of the crisis the Director-General of FAO has approved nine emergency food aid operations for affected Liberians within the country and in Côte d'Ivoire, Guinea and Sierra Leone. The total estimated value of the emergency food assistance is $US 105,302,501. In 1990 FAO provided assistance to displaced Liberians in Côte d'Ivoire in the form of certified rice seeds and in Guinea for the renovation of lowlands partly for the use of refugees from Liberia for food production.

52. Also, the FAO Representatives in Côte d'Ivoire, Guinea and Sierra Leone provided liaison and logistics support to relief activities by UNDP, WFP and non-governmental organizations for Liberian refugees in the host countries. FAO has undertaken the preparation of a project on agricultural emergency and rehabilitation assistance for Liberian refugees and displaced persons in Côte d'Ivoire, Guinea, Sierra Leone and Liberia. A decision by UNDP on the project is still awaited.

53. FAO contributes specifically to the efforts of the United Nations system to assist Liberia through the activities of its Global Information and Early Warning System on Food and Agriculture (GIEWS) aimed at keeping the international community informed of the food and food aid needs of the country. The food situation in Liberia and the extent of food aid required is continuously monitored and reported in the GIEWS regular publication, Foodcrops and Shortages, and the Special Africa Report.

54. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has allocated $US 25,000 to help finance additional basic educational services in the region of Guineé Forestière in Guinea to accommodate large numbers of Liberian refugees who have taken refuge in the area. A joint African Development Bank/UNESCO mission is scheduled to travel to Liberia in 1991. Discussions are currently under way with UNHCR for UNESCO to provide technical assistance in curriculum development for Liberian refugees in Sierra Leone, Guinea and Côte d'Ivoire.

55. The Universal Postal Union (UPU) has offered a two-week fellowship in 1991 for a course in quality of postal service and another two-week fellowship for a workshop on "mail delivery in cities and medium-sized towns". The International Telecommunication Union (ITU) has plans to conduct a sectoral review to determine the level and extent of assistance necessary in telecommunications.

56. The United Nations Industrial Development Organization (UNIDO) sent a fact-finding mission to Monrovia in July 1991 to assess priority needs of Liberian industries and to determine the nature of rehabilitation. A more precise UNIDO programme of action will be made available shortly.

V. ASSISTANCE BY MEMBER STATES AND OTHER DONORS

57. By communications dated 29 April 1991, the Secretary-General requested Member States and other donors to provide information on the nature and extent of emergency assistance rendered to Liberia in compliance with General Assembly resolution 45/232. The responses received, including information on assistance to Liberian refugees in neighbouring countries, are summarized below.

Austria

58. The Austrian Government has allocated 500,000 Austrian schillings for emergency assistance to Liberia.

Belgium

59. On October 1990, the Central Department for Cooperation granted 2.5 million Belgian francs to Médecins sans Frontières (MSF/B) for the purchase and transport of medicine for Liberians affected by the civil war and living within Liberia.

60. In December 1990, also through MSF, Belgium provided 5 million Belgian francs for the purchase of medicines and medical supplies for Liberian refugees in Sierra Leone.

Côte d'Ivoire

61. The status of assistance to Liberian refugees in Côte d'Ivoire as at 25 June 1991 is as follows. The number of refugees in March 1991 was 322,468. The trend has been towards a decrease in numbers as the situation improves; currently the refugees number fewer than 300,000.

62. The overall strategy of aid and assistance activities is to have refugees received by families and to assign "tutors" to watch over them, taking account of ethnic affinities.

63. Coordination of aid has been established by the National Committee for the Coordination of Assistance to Liberian Refugees, chaired by the Minister of the Interior and composed of all the humanitarian organizations working in the field.

64. The Government of Côte d'Ivoire does not administer any aid. Aid is handed over to the League of Red Cross and Red Crescent Societies for immediate distribution. The rest is administered by the National Red Cross, which reports on its use to the Committee.

65. Thirteen thousand units housing 10 persons each have been constructed with aid from the European Community (EC) and UNHCR and they form part of the asylum villages. This housing has been furnished by non-governmental and governmental organizations.

66. Food has been furnished by the Government of Côte d'Ivoire, the United States Agency for International Development (USAID), WFP and certain national and international assistance organizations. The cost amounted to $US 59,701,303. Seeds have been donated by the Government of Côte d'Ivoire and certain organizations like FAO.

67. A team from Médecins sans Frontières of France (MSF/F) is working with the rural health sector to ensure:

(a) Immunization coverage in the measles-control campaign;

(b) The supply of medications and medical material to health centres;

(c) The opening of new health posts;

(d) The performance of emergency surgery;

(e) The weekly monitoring of refugees for epidemics;

(f) The treatment of the seriously malnourished in clinics.

68. Drinking-water is being supplied with assistance from UNHCR and UNICEF. Improved latrines are being constructed.

69. These operations have not yet reached all departments where Liberian refugees have been given refuge, for lack of financing. There is a problem owing to the condition of the access routes; a bridge must be constructed over the Calvally River and a new ferry must be acquired.

70. Côte d'Ivoire would like a strategy developed to encourage refugees to return to Liberia, on the one hand, and to impede new influxes provoked by famine, on the other.

71. Côte d'Ivoire would support broader action allowing direct assistance to be given by Member States and by governmental and non-governmental organizations in Liberian territory.

Denmark

72. In 1990 Denmark's humanitarian emergency assistance to victims of the civil war in Liberia amounted to DKr 1 million channelled through Folkekirkens Nodhjaelp (Danchurchaid).

73. In 1991 Danish humanitarian assistance for the same purpose has reached DKr 5.9 million to date.

74. Of that amount the Adventists' relief organization in Denmark, ADRA Danmark, was granted DKr 1 million for a relief operation for the benefit of Liberian refugees in Guinea and another DKr 2.4 million for relief operation in Liberia.

75. Furthermore, DKr 2.5 million have been channelled through UNICEF for the establishment and running of a Scandinavian emergency hospital at Monrovia. Another DKr 1 million is expected to be granted for the same purpose in the near future.

Germany

76. In 1990 Germany provided DM 200,000 for victims of the conflict through the International Committee of the Red Cross (ICRC) and another DM 14,991 through bilateral channels for refugees in Monrovia. Also in 1990 humanitarian assistance in the amount of DM 1.7 million was allocated for Liberian refugees in the neighbouring countries of Guinea, Sierra Leone, Côte d'Ivoire and Ghana. Food aid of DM 6 million was provided through the WFP and a German non-governmental organization.

77. In 1991 so far medical supplies in the amount of DM 315,000 have been given to the Monrovia hospital via a German non-governmental organization. No food aid figures are available for 1991.

Ghana

78. The financial commitment of the Government of Ghana to the emergency situation in Liberia is as follows:

August 1990-June 1991

	United States dollars
Rents, port dues, pilot and towage	60 270
Water supplied to ships	2 282
Stevedoring	23 683
Fire service	154
Hydrographic survey	1 981
Allowances paid to workers	50 000
Incidentals	10 500
Total	148 870

August 1990-June 1991

	Cedis
Allowances and other expenses paid to personnel involved in the programme	10 000 000
Fuel, repairs and transportation, and so on	25 000 000
Firewood, ingredients and others	6 000 000
Drugs and pharmaceuticals	50 000 000
Supply of electrical power to refugee camp at Gomoa Buduburam	28 000 000
Other incidentals	2 000 000
Total	121 000 000

Italy

79. A contribution of 100 million lire was made on 2 April 1990 to UNHCR for the distribution of emergency aid to Liberian refugees in Côte d'Ivoire. The contribution has been fully disbursed.

80. Food aid (canned sardines) was allocated in September 1990 for a total value of 500 million lire in favour of Liberian refugees in Guinea. That food aid was distributed in May 1991.

81. Food aid (rice) was allocated in October 1990 for a total value of 500 million lire in favour of Liberian refugees in Ghana and Ghanaian repatriates from Liberia. That food aid was distributed in March 1991.

82. In December 1990, an emergency flight was organized through UNDRO with the aim of delivering relief goods (1,000 jerricans, 25 tanks of 3.5 litres capacity, 4 electric generators, equipment for generators, 20 radio sets, 3 small boats) for a total value of 180 million lire, inclusive of transport costs.

83. Further humanitarian aid to the Liberian people is presently under consideration by the Italian authorities.

Japan

84. The Government of Japan has provided emergency aid to Liberia as follows:

Emergency assistance through WFP

Fiscal year 1990: Rice 3,550 tons (equivalent to ¥200 million)

Emergency assistance through UNHCR special programme for refugees

Fiscal year 1990: ¥213 million
Fiscal year 1991: ¥168 million

Mauritius

85. The Government of Mauritius has made a contribution of $US 5,000 to the Economic Community of West African States (ECOWAS) to alleviate the hardship of the Liberian people.

Norway

86. The Norwegian emergency assistance to Liberia for 1990 amounted to NKr 5 million. The contribution was channelled through UNHCR and UNICEF for assistance to Liberian refugees in Guinea and Côte d'Ivoire.

87. During the first half of 1991 the following additional amounts were granted:

	Norwegian krone
UNICEF: Communications and X-ray equipment	970 000
Norwegian Red Cross: support for Liberian refugees in Guinea, Côte d'Ivoire and Sierra Leone	1 000 000
Norwegian Refugee Council: education, health care, food and medicines for refugee children at Freetown	757 000
CARE Norway: food for refugees in Sierra Leone	2 000 000
Norwegian Church Aid: assistance to refugees in Sierra Leone	1 340 000
WFP: Liberia emergency operations	3 000 000
UNICEF: medicines and medical equipment	2 000 000

Sweden

88. The Government of Sweden has allocated SKr 16.3 million to UNICEF for emergency relief assistance in Liberia. At the request of UNICEF, that contribution has been utilized for personnel and logistical support from SWEDRELIEF to a Nordic field hospital at Monrovia. SWEDRELIEF is a special unit for disaster relief and a civilian section of Sweden's contingency force for United Nations service.

United Kingdom of Great Britain and Northern Ireland

89. The British Government's total bilateral contribution for emergency assistance in Liberia currently stands at £775,630. About half was for operations in Liberia and the remainder for relief efforts in neighbouring countries affected by the troubles there. A breakdown of that assistance is provided below. In addition, the Government has directed substantial assistance to Liberia through the European Community.

Country	Executing agency	Amount (pounds sterling)	Type of assistance
Liberia	UNDRO	258 100	Eight-person monitoring and feeding team
	UNDRO	15 750	Rations for return of United Nations staff to Monrovia, November
	SCF	100 000	Cost of first six months of two-man team at Monrovia and support at Freetown
	Total	373 850	
Sierra Leone	UNHCR	20 000	Shelter materials for refugees
	CARE	13 000	Project for refugees
	UNDRO	8 750	Returnees assistance
	UNDP	5 000	Repatriation of Guineans
	UNDRO	84 000	Returning Sierra Leonians
	UNHCR	200 000	Refugee programme
	Total	330 750	
Côte d'Ivoire	UNHCR	15 000	Refugee programme
Guinea	UNHCR	15 000	Refugee programme
	UNDRO	8 750	Returnees assistance
	Total	23 750	
Ghana	British High Command	32 280	Water supply for refugees

United States of America

90. The United States Government has responded to the Liberia crisis by providing continued relief assistance to displaced persons in Liberia, and to refugees in Guinea, Côte d'Ivoire, Sierra Leone, and Ghana. During the past 19 months the United States State Department's Refugee Bureau (RB), the Africa Bureau of the Agency for International Development (AID), the Office of Foreign Disaster Assistance (OFDA) and Food for Peace (FFP) have given high priority to the crisis. A total of $US 129,049,937 has been contributed by the United States Government to relief efforts in the West Africa region in the course of the current crisis.

91. OFDA contributed $US 4,268,016, including a recent grant of $96,390 to Community of Caring to assist orphans in the Liberian capital. On 11 May, an additional $US 550,000 was allocated to MSF/Belgium in support of its ongoing relief activities in Liberia. On 11 June, $US 1 million was allocated to UNICEF to undertake repairs to the water and sanitation system in Liberia. This brings OFDA's total assistance to $US 4,268,016.

92. RB responded to the West Africa crisis by sending medical and relief experts to the affected areas and has provided $US 12,042,438. FFP has programmed a total of 189,705 metric tons of food aid estimated at $US 112,100,000. A total of 153,000 metric tons have been sent to the region. Other agencies have contributed $US 353,700.

Commission of the European Communities

93. The status of emergency aid programmes for Liberian refugees and displaced persons as at 1 July 1991 is as follows:

Date of approval	Country	Executing agency	Amount (ECUs)
Art. 203			
23 January 1990	Côte d'Ivoire	MSF (F)	120 000
		LICROSS	235 000
26 January 1990	Guinea	MSF (B)	150 000
16 February 1990	Guinea	MSF (B)	230 000
9 April 1990	Liberia	MSF (B)	130 000
21 June 1990	Liberia	MSF (B)	400 000
		MSF (B)	167 000
		MSF (F)	83 000
	Guinea	LICROSS	306 000
		MSF (B)	200 000
		UNHCR	94 000

/...

Date of approval	Country	Executing agency	Amount (ECUs)
27 June 1990	Sierra Leone	UNHCR	200 000
		MSF (F)	100 000
		LICROSS	100 000
24 July 1990	Côte d'Ivoire	MSF (F)	200 000
3 August 1990	Liberia	CICR	137 000
		Alliance Médicale Internationale	113 000
26 September 1990	Liberia	MSF (B)	306 000
		MSF (B)	264 000
		Médecins du Monde	100 000
	Côte d'Ivoire	MSF (F)	190 000
	Sierra Leone	Concern Universal	264 000
		MSF (F)	110 000
	Guinea	MSF (B)	250 000
		UNHCR	2 000 000
	Côte d'Ivoire	UNHCR	685 000
	Sierra Leone	UNHCR	685 000
	Ghana	National Catholic Service	300 000
		World Vision	25 000
		Reserve	5 000
16 October 1990	Côte d'Ivoire	LICROSS	525 000
	Guinea, Sierra Leone, Mali	EC Delegation	125 000
15 November 1990	Liberia	MSF (B)	160 000
		AICF	85 000
		AMI	115 000
		MSF (B)	200 000
		MSF (B)	50 000
		Reserve	40 000
21 December 1990	Liberia	MSF (B)	650 000

Date of approval	Country	Executing agency	Amount (ECUs)
7 March 1991	Liberia	WFP	851 000
		MSF (B)	1 109 000
		MSF (F)	260 000
		Lutheran World Federation	240 000
		Concern	160 000
		AMI	86 000
		MSF (F)	271 000
		MSF (B)	924 000
25 April 1991	Liberia	ICRC	540 000
		Action Internationale contre la Faim	90 000
29 July 1991	Liberia	MSF	650 000
Art. 204			
19 March 1990	Côte d'Ivoire	MSF (F)	741 000
13 May 1990	Guinea	SNAPE a/	420 000
23 October 1990	Guinea	MSF (B)	1 200 000
13 August 1991	Guinea	SNAPE a/	700 000
		Total	18 316 000

a/ Service National d'Amenagement des Points d'Eau.

UNITED
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Agenda item 104

FINANCIAL REPORTS AND AUDITED FINANCIAL STATEMENTS, AND REPORTS OF THE BOARD OF AUDITORS

Question of unliquidated obligations

Report of the Secretary-General

1. The General Assembly, in paragraph 14 of its resolution 45/235 of 21 December 1990, reaffirmed the importance of strict compliance with financial regulations and rules on the subject of unliquidated obligations and requested the Secretary-General, in the light of his experience in implementing the new budget process and in the context of the recommendations of the Board of Auditors, to analyse outstanding issues on the subject and to submit a thorough report to the Assembly at its forty-sixth session.

2. The applicable financial regulations are 4.3 and 4.4, which state:

"Regulation 4.3: Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to discharge obligations in respect of goods supplied and services rendered in the financial period and to liquidate any other outstanding legal obligation of the financial period. The balance of the appropriations shall be surrendered.

"Regulation 4.4: At the end of the twelve-month period provided in regulation 4.3 above, the then remaining balance of any appropriations retained shall be surrendered. Any unliquidated obligations of the financial period in question shall, at that time, be cancelled or, where the obligation remains a valid charge, transferred as an obligation against current appropriations."

I. BACKGROUND

3. During the audit of the accounts of the organization for the biennium 1988-1989, the auditors noted that the above financial regulations had not been complied with in full in respect of certain obligations that had arisen during the preceding biennium, which ended on 31 December 1987. In essence, certain large obligations outstanding at the end of that biennium could not be liquidated during the ensuing 12-month period and remained outstanding, as valid obligations, at 31 December 1988. Notwithstanding the provisions of financial regulation 4.4, the Secretary-General transferred these charges to accounts payable, rather than cancelling them, or requesting that they be re-obligated against the appropriations of the then current financial period (i.e. the biennium 1988-1989).

4. In response to the observations of the auditors, the administration noted, as reflected in paragraph 65 of the report of the Board of Auditors 1/ that

> "With the introduction of new procedures related to budgetary ceilings, revised estimates and the contingency fund, it has become virtually impossible to seek budgetary authority for a major expenditure in a new biennium to replace a lapsed obligation from a previous biennium which remains due and payable. Where funds are not available in the new biennium to meet valid but unpaid obligations, the only viable alternatives are either to abandon the project, and thus incur possible legal ramifications, or to convert the available credits from the previous biennium into accounts payable."

The Secretary-General concluded that "in a few exceptional cases, the latter course of action [had] been taken".

5. The Board of Auditors responded (paras. 66 and 67) by stating the belief that the financial regulation was unequivocal and by recommending strict adherence to it, including the surrender of the remaining balance of the account in question and the seeking of reappropriation for any remaining obligations that were still valid.

6. The Advisory Committee commented on the situation in paragraph 13 of its related report (A/45/570 and Corr.1) and stated its view that a solution to the problem created by the new budgetary process would be for the Administration to submit to the General Assembly an appropriate amendment to financial regulation 4.4.

II. DEVELOPMENTS SINCE THE FORTY-FIFTH SESSION

7. In view of the reaffirmation by the General Assembly of the importance of strict compliance with the financial regulations and rules, all remaining unliquidated obligations pertaining to the biennium 1988-1989 lapsed at the end of 1990, whether or not they represented valid legal obligations of the Organization.

8. As it happened, there were few remaining obligations from the previous biennium still outstanding at 31 December 1990 and most of these could be absorbed against appropriations of the current biennium without difficulty. However, there were certain exceptions, which are described in the following paragraph.

9. Under section 29 of the regular budget for the biennium 1988-1989, provision was made, as described in paragraph 29.55 (a) (i) of the budget document, for the conversion of the Chinese Stenographic Unit to word processing. At the end of the biennium, an amount of $198,000 remained obligated for that purpose, which, owing to delays attributable to the outside contractor, could not be utilized before the end of 1990. Under section 32, there were several projects of a long-term nature in progress at the end of the biennium. They include the elevator modernization programme and a short-circuit protection programme at Headquarters, and a number of projects at the Economic Commission for Africa (ECA), including a carpeting programme and the installation of a digital telephone system. Each of these projects is described in the budget document for the biennium 1988-1989, notably in paragraphs 32.5, 32.9 and 32.16. At 31 December 1989, obligations remained outstanding in a total amount of $5.3 million for the projects at Headquarters and $1.9 million for the projects at Addis Ababa. During 1990, the year after the end of the biennium during which obligations remain valid, there were unavoidable delays in each of these projects, including delays associated with the finalization of contracts, with the result that $0.7 million at Headquarters and $1.7 million at Addis Ababa had not been disbursed by the end of 1990. In accordance with the strict application of financial regulation 4.4, as stipulated by the General Assembly, those amounts, totalling $2.6 million, lapsed at the end of 1990 and have not been available for spending in 1991.

10. As far as the current budget is concerned, it may be expected that some of those contracts which had not been completed by the end of 1990, with consequent loss of funding, will be the subject of submissions in the second performance report for the biennium 1990-1991. This includes amounts of $0.2 million for technological innovations in the Department of Conference Services and $0.2 million for carpeting projects at Addis Ababa, since these projects have necessarily continued into 1991 without available funding in the 1990-1991 budget. In the Office of General Services delays in implementation of other projects budgeted for in the current biennium have resulted in funds being available to finance leftover obligations from the prior biennium. However, at ECA certain projects, such as the installation of a digital telephone system, have had to be postponed and will be reintroduced at a later stage.

III. CONCLUSION AND RECOMMENDATIONS

11. The arrangement it is intended to follow in 1991, whereby certain lapsed valid obligations could be compensated for by requests for revised appropriations in the framework of the second performance report for the following biennium, is at variance with the new budget process established by

General Assembly resolution 41/213 of 19 December 1986, which limits the size and nature of additions to a budget once it has been adopted. However, the latter process makes no provision for technical adjustments of the type described in the present report. On the other hand, the practice followed earlier by the Secretary-General, namely, retaining on his own initiative a few significant obligations as accounts payable beyond the time period stipulated by financial regulation 4.4, is also at variance with acceptable procedure.

12. In order to resolve the situation satisfactorily, the Secretary-General proposes that an acceptable procedure be found to enable long-term obligations to continue to be charged against the budget for the financial period in which they were approved, notwithstanding the one-year limitation period provided for in the financial regulations. There are two possible ways in which this might be done:

(a) By extending to other projects, specifically identified as being of a multiyear nature, the provision, currently applied to construction projects and the Integrated Management Information System, whereby appropriated funds are placed in a separate account, allowing unexpended balances to be carried forward into succeeding bienniums until the projects are completed. A rather broader proposal was made in paragraph 35.6 of the proposed programme budget for the biennium 1992-1993, wherein it was suggested that the entire provision for alterations, improvements and major maintenance under section 35 should be exempted from the lapsing provisions. In its related report, 2/ the Advisory Committee stressed the importance of providing adequate information concerning the anticipated cost and duration of a long-term project and pointed out that, if the General Assembly agreed to a given project, it would, on the basis of adequate supporting information, provide the resources necessary in each biennium. While the concerns of the Advisory Committee regarding the provision of adequate information will be fully respected, the Secretary-General, in returning to the proposal, would stress the multiyear nature of the projects in question and the difficulty in determining far in advance exactly how much would be required for each biennium, or what the actual cash disbursement situation would be one year after the end of the budget period, which is when financial regulation 4.4 takes effect.

(b) By recognizing that there may be certain contracts, not necessarily limited to section 35 of the proposed programme budget, which cannot be fully liquidated within 12 months of the end of the biennium to which they relate, and by authorizing the Secretary-General, in the context of the first performance report of the ensuing biennium, to draw such cases to the attention of the General Assembly. The Assembly, in turn, could authorize the selective waiving of financial regulation 4.4 in those cases where it was satisfied that a valid charge remained against the resources of the previous biennium requiring more than 12 months to liquidate.

13. Since the foregoing suggestions are complementary to one another, the Secretary-General proposes them both for the approval of the General Assembly.

Notes

1/ Official Records of the General Assembly, Forty-fifth Session, Supplement No. 5 (A/45/5, vol. I and Corr.1-2).

2/ Ibid., Forty-sixth Session, Supplement No. 7 (A/46/7), para. 35.4.

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Forty-sixth session
Item 130 of the provisional agenda*

REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-THIRD SESSION

Draft articles adopted by the International Law Commission on topics considered at its forty-third session

Note by the Secretary-General

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* A/46/150.

I. INTRODUCTION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, in accordance with its statute annexed thereto, as subsequently amended, held its forty-third session at its permanent seat at the United Nations Office at Geneva from 29 April to 19 July 1991.

2. The Commission's agenda for its forty-third session consisted of the following items:

1. Organization of work of the session.

2. State responsibility.

3. Jurisdictional immunities of States and their property.

4. Draft code of crimes against the peace and security of mankind.

5. The law of the non-navigational uses of international watercourses.

6. International liability for injurious consequences arising out of acts not prohibited by international law.

7. Relations between States and international organizations (second part of the topic).

8. Programme, procedures and working methods of the Commission, and its documentation.

9. Cooperation with other bodies.

10. Date and place of the forty-fourth session.

11. Other business.

3. The work of the Commission during its forty-third session is described in its report to the General Assembly. 1/ Chapter I of the report is entitled "Introduction". Chapter II concerns the topic "Jurisdictional immunities of States and their property". The Commission completed its second reading of the draft articles on this topic. Chapter III relates to the topic "The law of the non-navigational uses of international watercourses". The Commission completed its first reading of the draft articles on this topic. Chapter IV is devoted to the topic "Draft code of crimes against the peace and security of mankind". The Commission also completed its first reading of the draft

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1/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10).

articles on this topic. The present note reproduces the three sets of draft articles referred to above. Chapter V concerns the topic "International liability for injurious consequences arising out of acts not prohibited by international law". Chapter VI is devoted to the topic "Relations between States and international organizations (second part of the topic)". Chapter VII concerns the topic "State responsibility". Chapter VIII deals with matters relating to the programme, procedures and working methods of the Commission and its documentation, as well as cooperation with other bodies, and also refers to certain administrative and other matters.

II. DRAFT ARTICLES ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

PART I

INTRODUCTION

Article 1

Scope of the present articles

The present articles apply to the immunity of a State and its property from the jurisdiction of the courts of another State.

Article 2

Use of terms

1. For the purposes of the present articles:

(a) "court" means any organ of a State, however named, entitled to exercise judicial functions;

(b) "State" means:

(i) the State and its various organs of government;

(ii) constituent units of a federal State;

(iii) political subdivisions of the State which are entitled to perform acts in the exercise of the sovereign authority of the State;

(iv) agencies or instrumentalities of the State and other entities, to the extent that they are entitled to perform acts in the exercise of the sovereign authority of the State;

(v) representatives of the State acting in that capacity;

(c) "commercial transaction" means:

(i) any commercial contract or transaction for the sale of goods or supply of services;

(ii) any contract for a loan or other transaction of a financial nature, including any obligation of guarantee or of indemnity in respect of any such loan or transaction;

(iii) any other contract or transaction of a commercial, industrial, trading or professional nature, but not including a contract of employment of persons.

2. In determining whether a contract or transaction is a "commercial transaction" under paragraph 1 (c), reference should be made primarily to the nature of the contract or transaction, but its purpose should also be taken into account if, in the practice of the State which is a party to it, that purpose is relevant to determining the non-commercial character of the contract or transaction.

3. The provisions of paragraphs 1 and 2 regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or in the internal law of any State.

Article 3

Privileges and immunities not affected by the present articles

1. The present articles are without prejudice to the privileges and immunities enjoyed by a State under international law in relation to the exercise of the functions of:

(a) its diplomatic missions, consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences; and

(b) persons connected with them.

2. The present articles are likewise without prejudice to privileges and immunities accorded under international law to Heads of State ratione personae.

Article 4

Non-retroactivity of the present articles

Without prejudice to the application of any rules set forth in the present articles to which jurisdictional immunities of States and their property are subject under international law independently of the present

articles, the articles shall not apply to any question of jurisdictional immunities of States or their property arising in a proceeding instituted against a State before a court of another State prior to the entry into force of the present articles for the States concerned.

PART II

GENERAL PRINCIPLES

Article 5

State immunity

A State enjoys immunity, in respect of itself and its property, from the jurisdiction of the courts of another State subject to the provisions of the present articles.

Article 6

Modalities for giving effect to State immunity

1. A State shall give effect to State immunity under article 5 by refraining from exercising jurisdiction in a proceeding before its courts against another State and to that end shall ensure that its courts determine on their own initiative that the immunity of that other State under article 5 is respected.

2. A proceeding before a court of a State shall be considered to have been instituted against another State if that other State:

(a) is named as a party to that proceeding; or

(b) is not named as a party to the proceeding but the proceeding in effect seeks to affect the property, rights, interests or activities of that other State.

Article 7

Express consent to exercise of jurisdiction

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State with regard to a matter or case if it has expressly consented to the exercise of jurisdiction by the court with regard to the matter or case:

(a) by international agreement;

(b) in a written contract; or

(c) by a declaration before the court or by a written communication in a specific proceeding.

2. Agreement by a State for the application of the law of another State shall not be interpreted as consent to the exercise of jurisdiction by the courts of that other State.

Article 8

Effect of participation in a proceeding before a court

1. A State cannot invoke immunity from jurisdiction in a proceeding before a court of another State if it has:

(a) itself instituted the proceeding; or

(b) intervened in the proceeding or taken any other step relating to the merits. However, if the State satisfies the court that it could not have acquired knowledge of facts on which a claim to immunity can be based until after it took such a step, it can claim immunity based on those facts, provided it does so at the earliest possible moment.

2. A State shall not be considered to have consented to the exercise of jurisdiction by a court of another State if it intervenes in a proceeding or takes any other step for the sole purpose of:

(a) invoking immunity; or

(b) asserting a right or interest in property at issue in the proceeding.

3. The appearance of a representative of a State before a court of another State as a witness shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

4. Failure on the part of a State to enter an appearance in a proceeding before a court of another State shall not be interpreted as consent by the former State to the exercise of jurisdiction by the court.

Article 9

Counter-claims

1. A State instituting a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counter-claim arising out of the same legal relationship or facts as the principal claim.

2. A State intervening to present a claim in a proceeding before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of any counter-claim arising out of the same legal relationship or facts as the claim presented by the State.

3. A State making a counter-claim in a proceeding instituted against it before a court of another State cannot invoke immunity from the jurisdiction of the court in respect of the principal claim.

PART III

PROCEEDINGS IN WHICH STATE IMMUNITY CANNOT BE INVOKED

Article 10

Commercial transactions

1. If a State engages in a commercial transaction with a foreign natural or juridical person and, by virtue of the applicable rules of private international law, differences relating to the commercial transaction fall within the jurisdiction of a court of another State, the State cannot invoke immunity from that jurisdiction in a proceeding arising out of that commercial transaction.

2. Paragraph 1 does not apply:

(a) in the case of a commercial transaction between States; or

(b) if the parties to the commercial transaction have expressly agreed otherwise.

3. The immunity from jurisdiction enjoyed by a State shall not be affected with regard to a proceeding which relates to a commercial transaction engaged in by a State enterprise or other entity established by the State which has an independent legal personality and is capable of:

(a) suing or being sued; and

(b) acquiring, owning or possessing and disposing of property, including property which the State has authorized it to operate or manage.

Article 11

Contracts of employment

1. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to a contract of employment

between the State and an individual for work performed or to be performed, in whole or in part, in the territory of that other State.

2. Paragraph 1 does not apply if:

(a) the employee has been recruited to perform functions closely related to the exercise of governmental authority;

(b) the subject of the proceeding is the recruitment, renewal of employment or reinstatement of an individual;

(c) the employee was neither a national nor a habitual resident of the State of the forum at the time when the contract of employment was concluded;

(d) the employee is a national of the employer State at the time when the proceeding is instituted; or

(e) the employer State and the employee have otherwise agreed in writing, subject to any considerations of public policy conferring on the courts of the State of the forum exclusive jurisdiction by reason of the subject-matter of the proceeding.

Article 12

Personal injuries and damage to property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to pecuniary compensation for death or injury to the person, or damage to or loss of tangible property, caused by an act or omission which is alleged to be attributable to the State, if the act or omission occurred in whole or in part in the territory of that other State and if the author of the act or omission was present in that territory at the time of the act or omission.

Article 13

Ownership, possession and use of property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of:

(a) any right or interest of the State in, or its possession or use of, or any obligation of the State arising out of its interest in, or its possession or use of, immovable property situated in the State of the forum;

(b) any right or interest of the State in movable or immovable property arising by way of succession, gift or bona vacantia; or

(c) any right or interest of the State in the administration of property, such as trust property, the estate of a bankrupt or the property of a company in the event of its winding-up.

Article 14

Intellectual and industrial property

Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) the determination of any right of the State in a patent, industrial design, trade name or business name, trade mark, copyright or any other form of intellectual or industrial property, which enjoys a measure of legal protection, even if provisional, in the State of the forum; or

(b) an alleged infringement by the State, in the territory of the State of the forum, of a right of the nature mentioned in subparagraph (a) which belongs to a third person and is protected in the State of the forum.

Article 15

Participation in companies or other collective bodies

1. A State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to its participation in a company or other collective body, whether incorporated or unincorporated, being a proceeding concerning the relationship between the State and the body or the other participants therein, provided that the body:

(a) has participants other than States or international organizations; and

(b) is incorporated or constituted under the law of the State of the forum or has its seat or principal place of business in that State.

2. A State can, however, invoke immunity from jurisdiction in such a proceeding if the States concerned have so agreed or if the parties to the dispute have so provided by an agreement in writing or if the instrument establishing or regulating the body in question contains provisions to that effect.

Article 16

Ships owned or operated by a State

1. Unless otherwise agreed between the States concerned, a State which owns or operates a ship cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the operation of that ship, if at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

2. Paragraph 1 does not apply to warships and naval auxiliaries nor does it apply to other ships owned or operated by a State and used exclusively on government non-commercial service.

3. For the purposes of this article, "proceeding which relates to the operation of that Ship" means, inter alia, any proceeding involving the determination of a claim in respect of:

(a) collision or other accidents of navigation;

(b) assistance, salvage and general average;

(c) repairs, supplies or other contracts relating to the ship;

(d) consequences of pollution of the marine environment.

4. Unless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the carriage of cargo on board a ship owned or operated by that State if, at the time the cause of action arose, the ship was used for other than government non-commercial purposes.

5. Paragraph 4 does not apply to any cargo carried on board the ships referred to in paragraph 2 nor does it apply to any cargo owned by a State and used or intended for use exclusively for government non-commercial purposes.

6. States may plead all measures of defence, prescription and limitation of liability which are available to private ships and cargoes and their owners.

7. If in a proceeding there arises a question relating to the government and non-commercial character of a ship owned or operated by a State or cargo owned by a State, a certificate signed by a diplomatic representative or other competent authority of that State and communicated to the court shall serve as evidence of the character of that ship or cargo.

Article 17

Effect of an arbitration agreement

If a State enters into an agreement in writing with a foreign natural or juridical person to submit to arbitration differences relating to a commercial transaction, that State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to:

(a) the validity or interpretation of the arbitration agreement;

(b) the arbitration procedure; or

(c) the setting aside of the award;

unless the arbitration agreement otherwise provides.

PART IV

STATE IMMUNITY FROM MEASURES OF CONSTRAINT IN CONNECTION WITH PROCEEDINGS BEFORE A COURT

Article 18

State immunity from measures of constraint

1. No measures of constraint, such as attachment, arrest and execution, against property of a State may be taken in connection with a proceeding before a court of another State unless and except to the extent that:

(a) the State has expressly consented to the taking of such measures as indicated:

(i) by international agreement;

(ii) by an arbitration agreement or in a written contract; or

(iii) by a declaration before the court or by a written communication after a dispute between the parties has arisen;

(b) the State has allocated or earmarked property for the satisfaction of the claim which is the object of that proceeding; or

(c) the property is specifically in use or intended for use by the State for other than government non-commercial purposes and is in the territory of the State of the forum and has a connection with the claim which is the object of the proceeding or with the agency or instrumentality against which the proceeding was directed.

2. Consent to the exercise of jurisdiction under article 7 shall not imply consent to the taking of measures of constraint under paragraph 1, for which separate consent shall be necessary.

Article 19

Specific categories of property

1. The following categories, in particular, of property of a State shall not be considered as property specifically in use or intended for use by the State for other than government non-commercial purposes under paragraph 1 (c) of article 18:

(a) property, including any bank account, which is used or intended for use for the purposes of the diplomatic mission of the State or its consular posts, special missions, missions to international organizations, or delegations to organs of international organizations or to international conferences;

(b) property of a military character or used or intended for use for military purposes;

(c) property of the central bank or other monetary authority of the State;

(d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

(e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

2. Paragraph 1 is without prejudice to paragraph 1 (a) and (b) of article 18.

PART V

MISCELLANEOUS PROVISIONS

Article 20

Service of process

1. Service of process by writ or other document instituting a proceeding against a state shall be effected:

(a) in accordance with any applicable international convention binding on the State of the forum and the State concerned; or

(b) in the absence of such a convention:

(i) by transmission through diplomatic channels to the Ministry of Foreign Affairs of the State concerned; or

(ii) by any other means accepted by the State concerned, if not precluded by the law of the State of the forum.

2. Service of process referred to in paragraph 1 (b) (i) is deemed to have been effected by receipt of the documents by the Ministry of Foreign Affairs.

3. These documents shall be accompanied, if necessary, by a translation into the official language, or one of the official languages, of the State concerned.

4. Any State that enters an appearance on the merits in a proceeding instituted against it may not thereafter assert that service of process did not comply with the provisions of paragraphs 1 and 3.

Article 21

Default judgement

1. A default judgement shall not be rendered against a State unless the court has found that:

(a) the requirements laid down in paragraphs 1 and 3 of article 20 have been complied with;

(b) a period of not less than four months has expired from the date on which the service of the writ or other document instituting a proceeding has been effected or deemed to have been effected in accordance with paragraphs 1 and 2 of article 20; and

(c) the present articles do not preclude it from exercising jurisdiction.

2. A copy of any default judgement rendered against a State, accompanied if necessary by a translation into the official language or one of the official languages of the State concerned, shall be transmitted to it through one of the means specified in paragraph 1 of article 20 and in accordance with the provisions of that paragraph.

3. The time-limit for applying to have a default judgement set aside shall not be less than four months and shall begin to run from the date on which the copy of the judgement is received or is deemed to have been received by the State concerned.

Article 22

Privileges and immunities during court proceedings

1. Any failure or refusal by a State to comply with an order of a court of another State enjoining it to perform or refrain from performing a specific act or to produce any document or disclose any other information for the purposes of a proceeding shall entail no consequences other than those which may result from such conduct in relation to the merits of the case. In particular, no fine or penalty shall be imposed on the State by reason of such failure or refusal.

2. A State shall not be required to provide any security, bond or deposit, however described, to guarantee the payment of judicial costs or expenses in any proceeding to which it is a party before a court of another State.

III. DRAFT ARTICLES ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES

PART I

INTRODUCTION

Article 1

Scope of the present articles

1. The present articles apply to uses of international watercourses and of their waters for purposes other than navigation and to measures of conservation related to the uses of those watercourses and their waters.

2. The use of international watercourses for navigation is not within the scope of the present articles except in so far as other uses affect navigation or are affected by navigation.

Article 2

Use of terms

For the purposes of the present articles:

(a) "international watercourse" means a watercourse, parts of which are situated in different States;

(b) "watercourse" means a system of surface and underground waters constituting by virtue of their physical relationship a unitary whole and flowing into a common terminus;

(c) "watercourse State" means a State in whose territory part of an international watercourse is situated.

Article 3

Watercourse agreements

1. Watercourse States may enter into one or more agreements, hereinafter referred to as "watercourse agreements", which apply and adjust the provisions of the present articles to the characteristics and uses of a particular international watercourse or part thereof.

2. Where a watercourse agreement is concluded between two or more watercourse States, it shall define the waters to which it applies. Such an agreement may be entered into with respect to an entire international watercourse or with respect to any part thereof or a particular project, programme or use, provided that the agreement does not adversely affect, to an appreciable extent, the use by one or more other watercourse States of the waters of the watercourse.

3. Where a watercourse State considers that adjustment or application of the provisions of the present articles is required because of the characteristics and uses of a particular international watercourse, watercourse States shall consult with a view to negotiating in good faith for the purpose of concluding a watercourse agreement or agreements.

Article 4

Parties to watercourse agreements

1. Every watercourse State is entitled to participate in the negotiation of and to become a party to any watercourse agreement that applies to the entire international watercourse, as well as to participate in any relevant consultations.

2. A watercourse State whose use of an international watercourse may be affected to an appreciable extent by the implementation of a proposed watercourse agreement that applies only to a part of the watercourse or to a particular project, programme or use is entitled to participate in consultations on, and in the negotiation of, such an agreement, to the extent that its use is thereby affected, and to become a party thereto.

PART II

GENERAL PRINCIPLES

Article 5

Equitable and reasonable utilization and participation

1. Watercourse States shall in their respective territories utilize an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal utilization thereof and benefits therefrom consistent with adequate protection of the watercourse.

2. Watercourse States shall participate in the use, development and protection of an international watercourse in an equitable and reasonable manner. Such participation includes both the right to utilize the watercourse and the duty to cooperate in the protection and development thereof, as provided in the present articles.

Article 6

Factors relevant to equitable and reasonable utilization

1. Utilization of an international watercourse in an equitable and reasonable manner within the meaning of article 5 requires taking into account all relevant factors and circumstances, including:

(a) geographic, hydrographic, hydrological, climatic, ecological and other factors of a natural character;

(b) the social and economic needs of the watercourse States concerned;

(c) the effects of the use or uses of the watercourse in one watercourse State on other watercourse States;

(d) existing and potential uses of the watercourse;

(e) conservation, protection, development and economy of use of the water resources of the watercourse and the costs of measures taken to that effect;

(f) the availability of alternatives, of corresponding value, to a particular planned or existing use.

2. In the application of article 5 or paragraph 1 of this article, watercourse States concerned shall, when the need arises, enter into consultations in a spirit of cooperation.

Article 7

Obligation not to cause appreciable harm

Watercourse States shall utilize an international watercourse in such a way as not to cause appreciable harm to other watercourse States.

Article 8

General obligation to cooperate

Watercourse States shall cooperate on the basis of sovereign equality, territorial integrity and mutual benefit in order to attain optimal utilization and adequate protection of an international watercourse.

Article 9

Regular exchange of data and information

1. Pursuant to article 8, watercourse States shall on a regular basis exchange reasonably available data and information on the condition of the watercourse, in particular that of a hydrological, meteorological, hydrogeological and ecological nature, as well as related forecasts.

2. If a watercourse State is requested by another watercourse State to provide data or information that is not reasonably available, it shall employ its best efforts to comply with the request but may condition its compliance upon payment by the requesting State of the reasonable costs of collecting and, where appropriate, processing such data or information.

3. Watercourse States shall employ their best efforts to collect and, where appropriate, to process data and information in a manner which facilitates its utilization by the other watercourse States to which it is communicated.

Article 10

Relationship between uses

1. In the absence of agreement or custom to the contrary, no use of an international watercourse enjoys inherent priority over other uses.

2. In the event of a conflict between uses of an international watercourse, it shall be resolved with reference to the principles and factors set out in articles 5 to 7, with special regard being given to the requirements of vital human needs.

PART III

PLANNED MEASURES

Article 11

Information concerning planned measures

Watercourse States shall exchange information and consult each other on the possible effects of planned measures on the condition of an international watercourse.

Article 12

Notification concerning planned measures with possible adverse effects

Before a watercourse State implements or permits the implementation of planned measures which may have an appreciable adverse effect upon other watercourse States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information in order to enable the notified States to evaluate the possible effects of the planned measures.

Article 13

Period for reply to notification

Unless otherwise agreed, a watercourse State providing a notification under article 12 shall allow the notified States a period of six months within which to study and evaluate the possible effects of the planned measures and to communicate their findings to it.

Article 14

Obligations of the notifying State during the period for reply

During the period referred to in article 13, the notifying State shall cooperate with the notified States by providing them, on request, with any additional data and information that is available and necessary for an accurate evaluation, and shall not implement or permit the implementation of the planned measures without the consent of the notified States.

Article 15

Reply to notification

1. The notified States shall communicate their findings to the notifying State as early as possible.

2. If a notified State finds that implementation of the planned measures would be inconsistent with the provisions of articles 5 or 7, it shall communicate this finding to the notifying State within the period referred to in article 13, together with a documented explanation setting forth the reasons for the finding.

Article 16

Absence of reply to notification

If, within the period referred to in article 13, the notifying State receives no communication under paragraph 2 of article 15, it may, subject to its obligations under articles 5 and 7, proceed with the implementation of the planned measures, in accordance with the notification and any other data and information provided to the notified States.

Article 17

Consultations and negotiations concerning planned measures

1. If a communication is made under paragraph 2 of article 15, the notifying State and the State making the communication shall enter into consultations and negotiations with a view to arriving at an equitable resolution of the situation.

2. The consultations and negotiations shall be conducted on the basis that each State must in good faith pay reasonable regard to the rights and legitimate interests of the other State.

3. During the course of the consultations and negotiations, the notifying State shall, if so requested by the notified State at the time it makes the communication, refrain from implementing or permitting the implementation of the planned measures for a period not exceeding six months.

Article 18

Procedures in the absence of notification

1. If a watercourse State has serious reason to believe that another watercourse State is planning measures that may have an appreciable adverse

effect upon it, the former State may request the latter to apply the provisions of article 12. The request shall be accompanied by a documented explanation setting forth the reasons for such belief.

2. In the event that the State planning the measures nevertheless finds that it is not under an obligation to provide a notification under article 12, it shall so inform the other State, providing a documented explanation setting forth the reasons for such finding. If this finding does not satisfy the other State, the two States shall, at the request of that other State, promptly enter into consultations and negotiations in the manner indicated in paragraphs 1 and 2 of article 17.

3. During the course of the consultations and negotiations, the State planning the measures shall, if so requested by the other State at the time it requests the initiation of consultations and negotiations, refrain from implementing or permitting the implementation of those measures for a period not exceeding six months.

Article 19

Urgent implementation of planned measures

1. In the event that the implementation of planned measures is of the utmost urgency in order to protect public health, public safety or other equally important interests, the State planning the measures may, subject to articles 5 and 7, immediately proceed to implementation, notwithstanding the provisions of article 14 and paragraph 3 of article 17.

2. In such cases, a formal declaratiaon of the urgency of the measures shall be communicated to the other watercourse States referred to in article 12 together with the relevant data and information.

3. The State planning the measures shall, at the request of any of the States referred to in paragraph 2, promptly enter into consultations and negotiations with it in the manner indicated in paragraphs 1 and 2 of article 17.

PART IV

PROTECTION AND PRESERVATION

Article 20

Protection and preservation of ecosystems

Watercourse States shall, individually or jointly, protect and preserve the ecosystems of international watercourses.

Article 21

Prevention, reduction and control of pollution

1. For the purposes of this article, "pollution of an international watercourse" means any detrimental alteration in the composition or quality of the waters of an international watercourse which results directly or indirectly from human conduct.

2. Watercourse States shall, individually or jointly, prevent, reduce and control pollution of an international watercourse that may cause appreciable harm to other watercourse States or to their environment, including harm to human health or safety, to the use of the waters for any beneficial purpose or to the living resources of the watercourse. Watercourse States shall take steps to harmonize their policies in this connection.

3. Watercourse States shall, at the request of any of them, consult with a view to establishing lists of substances, the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored.

Article 22

Introduction of alien or new species

Watercourse States shall take all measures necessary to prevent the introduction of species, alien or new, into an international watercourse which may have effects detrimental to the ecosystem of the watercourse resulting in appreciable harm to other watercourse States.

Article 23

Protection and preservation of the marine environment

Watercourse States shall, individually or jointly, take all measures with respect to an international watercourse that are necessary to protect and preserve the marine environment, including estuaries, taking into account generally accepted international rules and standards.

PART V

HARMFUL CONDITIONS AND EMERGENCY SITUATIONS

Article 24

Prevention and mitigation of harmful conditions

Watercourse States shall, individually or jointly, take all appropriate measures to prevent or mitigate conditions that may be harmful to other watercourse States, whether resulting from natural causes or human conduct, such as flood or ice conditions, water-borne diseases, siltation, erosion, salt-water intrusion, drought or desertification.

Article 25

Emergency situations

1. For the purposes of this article, "emergency" means a situation that causes, or poses an imminent threat of causing, serious harm to watercourse States or other States and that results suddenly from natural causes, such as floods, the breaking up of ice, landslides or earthquakes, or from human conduct as for example in the case of industrial accidents.

2. A watercourse State shall, without delay and by the most expeditious means available, notify other potentially affected States and competent international organizations of any emergency originating within its territory.

3. A watercourse State within whose territory an emergency originates shall, in cooperation with potentially affected States and, where appropriate, competent international organizations, immediately take all practicable measures necessitated by the circumstances to prevent, mitigate and eliminate harmful effects of the emergency.

4. When necessary, watercourse States shall jointly develop contingency plans for responding to emergencies, in cooperation, where appropriate, with other potentially affected States and competent international organizations.

PART VI

MISCELLANEOUS PROVISIONS

Article 26

Management

1. Watercourse States shall, at the request of any of them, enter into consultations concerning the management of an international watercourse, which may include the establishment of a joint management mechanism.

2. For the purposes of this article, "management" refers, in particular, to:

(a) planning the sustainable development of an international watercourse and providing for the implementation of any plans adopted; and

(b) otherwise promoting rational and optimal utilization, protection and control of the watercourse.

Article 27

Regulation

1. Watercourse States shall cooperate where appropriate to respond to needs or opportunities for regulation of the flow of the waters of an international watercourse.

2. Unless they have otherwise agreed, watercourse States shall participate on an equitable basis in the construction and maintenance or defrayal of the costs of such regulation works as they may have agreed to undertake.

3. For the purposes of this article, "regulation" means the use of hydraulic works or any other continuing measure to alter, vary or otherwise control the flow of the waters of an international watercourse.

Article 28

Installations

1. Watercourse States shall, within their respective territories, employ their best efforts to maintain and protect installations, facilities and other works related to an international watercourse.

2. Watercourse States shall, at the request of any of them which has serious reason to believe that it may suffer appreciable adverse effects, enter into consultations with regard to:

(a) the safe operation or maintenance of installations, facilities or other works related to an international watercourse; or

(b) the protection of installations, facilities or other works from wilful or negligent acts or the forces of nature.

Article 29

International watercourses and installations in time of armed conflict

International watercourses and related installations, facilities and other works shall enjoy the protection accorded by the principles and rules of international law applicable in international and internal armed conflict and shall not be used in violation of those principles and rules.

Article 30

Indirect procedures

In cases where there are serious obstacles to direct contacts between watercourse States, the States concerned shall fulfil their obligations of cooperation provided for in the present articles, including exchange of data and information, notification, communication, consultations and negotiations, through any direct procedure accepted by them.

Article 31

Data and information vital to national defence or security

Nothing in the present articles obliges a watercourse State to provide data or information vital to its national defence or security. Nevertheless, that State shall cooperate in good faith with the other watercourse States with a view to providing as much information as possible under the circumstances.

Article 32

Non-discrimination

Watercourse States shall not discriminate on the basis of nationality or residence in granting access to judicial and other procedures, in accordance with their legal systems, to any natural or juridical person who has suffered appreciable harm as a result of an activity related to an international watercourse or is exposed to a threat thereof.

IV. DRAFT ARTICLES ON THE DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

PART I

CHAPTER 1. DEFINITION AND CHARACTERIZATION

Article 1

Definition

The crimes [under international law] defined in this Code constitute crimes against the peace and security of mankind.

Article 2

Characterization

The characterization of an act or omission as a crime against the peace and security of mankind is independent of internal law. The fact that an act or omission is or is not punishable under internal law does not affect this characterization.

CHAPTER 2. GENERAL PRINCIPLES

Article 3

Responsibility and punishment

1. An individual who commits a crime against the peace and security of mankind is responsible therefor and is liable to punishment.

2. An individual who aids, abets or provides the means for the commission of a crime against the peace and security of mankind or conspires in or directly incites the commission of such a crime is responsible therefor and is liable to punishment.

3. An individual who commits an act constituting an attempt to commit a crime against the peace and security of mankind [as set out in articles ...] is responsible therefor and is liable to punishment. Attempt means any commencement of execution of a crime that failed or was halted only because of circumstances independent of the perpetrator's intention.

Article 4

Motives

Responsibility for a crime against the peace and security of mankind is not affected by any motives invoked by the accused which are not covered by the definition of the crime.

Article 5

Responsibility of States

Prosecution of an individual for a crime against the peace and security of mankind does not relieve a State of any responsibility under international law for an act or omission attributable to it.

Article 6*

Obligation to try or extradite

1. A State in whose territory an individual alleged to have committed a crime against the peace and security of mankind is present shall either try or extradite him.

2. If extradition is requested by several States, special consideration shall be given to the request of the State in whose territory the crime was committed.

3. The provisions of paragraphs 1 and 2 do not prejudge the establishment and the jurisdiction of an international criminal court.

Article 7

Non-applicability of statutory limitations

No statutory limitation shall apply to crimes against the peace and security of mankind.

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* This article will be reviewed if an international criminal court is established.

Article 8

Judicial guarantees

An individual charged with a crime against the peace and security of mankind shall be entitled without discrimination to the minimum guarantees due to all human beings with regard to the law and the facts. In particular, he shall have the right to be presumed innocent until proved guilty and have the rights:

(a) in the determination of any charge against him, to have a fair and public hearing by a competent, independent and impartial tribunal duly established by law or by treaty;

(b) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(c) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(d) to be tried without undue delay;

(e) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him and without payment by him in any such case if he does not have sufficient means to pay for it;

(f) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(g) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(h) not to be compelled to testify against himself or to confess guilt.

Article 9

Non bis in idem

1. No one shall be tried or punished for a crime under this Code for which he has already been finally convicted or acquitted by an international criminal court.*

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* The reference to an international criminal court does not prejudge the question of the establishment of such a court.

2. Subject to paragraphs 3, 4 and 5, no one shall be tried or punished for a crime under this Code in respect of an act for which he has already been finally convicted or acquitted by a national court, provided that, if a punishment was imposed, it has been enforced or is in the process of being enforced.

3. Notwithstanding the provisions of paragraph 2, an individual may be tried and punished by an international criminal court or by a national court for a crime under this Code if the act which was the subject of a trial and judgement as an ordinary crime corresponds to one of the crimes characterized in this Code.*

4. Notwithstanding the provisions of paragraph 2, an individual may be tried and punished by a national court of another State for a crime under this Code:

(a) if the act which was the subject of the previous judgement took place in the territory of that State; or

(b) if that State has been the main victim of the crime.

5. In the case of a subsequent conviction under this Code, the court, in passing sentence, shall deduct any penalty imposed and implemented as a result of a previous conviction for the same act.

Article 10

Non-retroactivity

1. No one shall be convicted under this Code for acts committed before its entry into force.

2. Nothing in this article shall preclude the trial and punishment of anyone for any act which, at the time when it was committed, was criminal in accordance with international law or domestic law applicable in conformity with international law.

Article 11

Order of a Government or a superior

The fact that an individual charged with a crime against the peace and security of mankind acted pursuant to an order of a Government or a superior does not relieve him of criminal responsibility if, in the circumstances at the time, it was possible for him not to comply with that order.

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* The reference to an international criminal court does not prejudge the question of the establishment of such a court.

Article 12

Responsibility of the superior

The fact that a crime against the peace and security of mankind was committed by a subordinate does not relieve his superiors of criminal responsibility, if they knew or had information enabling them to conclude, in the circumstances at the time, that the subordinate was committing or was going to commit such a crime and if they did not take all feasible measures within their power to prevent or repress the crime.

Article 13

Official position and responsibility

The official position of an individual who commits a crime against the peace and security of mankind, and particularly the fact that he acts as head of State or Government, does not relieve him of criminal responsibility.

Article 14

Defences and extenuating circumstances

1. The competent court shall determine the admissibility of defences under the general principles of law, in the light of the character of each crime.

2. In passing sentence, the court shall, where appropriate, take into account extenuating circumstances.

PART II

CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Article 15

Aggression

1. An individual who as leader or organizer plans, commits or orders the commission of an act of aggression shall, on conviction thereof, be sentenced [to ...].

2. Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.

3. The first use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression, although the

Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has been committed would not be justified in the light of other relevant circumstances, including the fact that the acts concerned or their consequences are not of sufficient gravity.

4. Any of the following acts, regardless of a declaration of war, constitutes an act of aggression, due regard being paid to paragraphs 2 and 3:

(a) the invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) the blockade of the ports or coasts of a State by the armed forces of another State;

(d) an attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) the use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement, or any extension of their presence in such territory beyond the termination of the agreement;

(f) the action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein;

(h) any other acts determined by the Security Council as constituting acts of aggression under the provisions of the Charter.

[5. Any determination by the Security Council as to the existence of an act of aggression is binding on national courts.]

6. Nothing in this article shall be interpreted as in any way enlarging or diminishing the scope of the Charter of the United Nations including its provisions concerning cases in which the use of force is lawful.

7. Nothing in this article could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on

Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.

Article 16

Threat of aggression

1. An individual who as leader or organizer commits or orders the commission of a threat of aggression shall, on conviction thereof, be sentenced [to ...].

2. Threat of aggression consists of declarations, communications, demonstrations of force or any other measures which would give good reason to the Government of a State to believe that aggression is being seriously contemplated against that State.

Article 17

Intervention

1. An individual who as leader or organizer commits or orders the commission of an act of intervention in the internal or external affairs of a State shall, on conviction thereof, be sentenced [to ...].

2. Intervention in the internal or external affairs of a State consists of fomenting [armed] subversive or terrorist activities or by organizing, assisting or financing such activities, or supplying arms for the purpose of such activities, thereby [seriously] undermining the free exercise by that State of its sovereign rights.

3. Nothing in this article shall in any way prejudice the right of peoples to self-determination as enshrined in the Charter of the United Nations.

Article 18

Colonial domination and other forms of alien domination

An individual who as leader or organizer establishes or maintains by force or orders the establishment or maintenance by force of colonial domination or any other form of alien domination contrary to the right of peoples to self-determination as enshrined in the Charter of the United Nations shall, on conviction thereof, be sentenced [to ...].

Article 19

Genocide

1. An individual who commits or orders the commission of an act of genocide shall, on conviction thereof, be sentenced [to ...].

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) imposing measures intended to prevent births within the group;

(e) forcibly transferring children of the group to another group.

Article 20

Apartheid

1. An individual who as leader or organizer commits or orders the commission of the crime of apartheid shall, on conviction thereof, be sentenced [to ...].

2. Apartheid consists of any of the following acts based on policies and practices of racial segregation and discrimination committed for the purpose of establishing or maintaining domination by one racial group over any other racial group and systematically oppressing it:

(a) denial to a member or members of a racial group of the right to life and liberty of person;

(b) deliberate imposition on a racial group of living conditions calculated to cause its physical destruction in whole or in part;

(c) any legislative measures and other measures calculated to prevent a racial group from participating in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group;

(d) any measures, including legislative measures, designed to divide the population along racial lines, in particular by the creation of separate reserves and ghettos for the members of a racial group, the prohibition of marriages among members of various racial groups or the expropriation of landed property belonging to a racial group or to members thereof;

(e) exploitation of the labour of the members of a racial group, in particular by submitting them to forced labour;

(f) persecution of organizations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid.

Article 21

Systematic or mass violations of human rights

An individual who commits or orders the commission of any of the following violations of human rights:

- murder
- torture
- establishing or maintaining over persons a status of slavery, servitude or forced labour
- persecution on social, political, racial, religious or cultural grounds

in a systematic manner or on a mass scale; or

- deportation of forcible transfer of population

shall, on conviction thereof, be sentenced [to ...].

Article 22

Exceptionally serious war crimes

1. An individual who commits or orders the commission of an exceptionally serious war crime shall, on conviction thereof, be sentenced [to ...].

2. For the purposes of this Code, an exceptionally serious war crime is an exceptionally serious violation of principles and rules of international law applicable in armed conflict consisting of any of the following acts:

(a) acts of inhumanity, cruelty or barbarity directed against the life, dignity or physical or mental integrity of persons [, in particular wilful killing, torture, mutilation, biological experiments, taking of hostages, compelling a protected person to serve in the forces of a hostile Power, unjustifiable delay in the repatriation of prisoners of war after the cessation of active hostilities, deportation or transfer of the civilian population and collective punishment];

(b) establishment of settlers in an occpuied territory and changes to the demographic composition of an occupied territory;

(c) use of unlawful weapons;

(d) employing methods or means of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment;

(e) large-scale destruction of civilian property;

(f) wilful attacks on property of exceptional religious, historical or cultural value.

Article 23

Recruitment, use, financing and training of mercenaries

1. An individual who as an agent or representative of a State commits or orders the commission of any of the following acts:

- recruitment, use, financing or training of mercenaries for activities directed against another State or for the purpose of opposing the legitimate exercise of the inalienable right of peoples to self-determination as recognized under international law

shall, on conviction thereof, be sentenced [to ...].

2. A mercenary is any individual who:

(a) is specially recruited locally or abroad in order to fight in an armed conflict;

(b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;

(c) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

(d) is not a member of the armed forces of a party to the conflict; and

(e) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

3. A mercenary is also any individual who, in any other situation:

(a) is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:

(i) overthrowing a Government or otherwise undermining the constitutional order of a State; or

(ii) undermining the territorial integrity of a State;

(b) is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;

(c) is neither a national nor a resident of the State against which such an act is directed;

(d) has not been sent by a State on official duty; and

(e) is not a member of the armed forces of the State in whose territory the act is undertaken.

Article 24

International terrorism

An individual who as an agent or representative of a State commits or orders the commission of any of the following acts:

- undertaking, organizing, assisting, financing, encouraging or tolerating acts against another State directed at persons or property and of such a nature as to create a state of terror in the minds of public figures, groups of persons or the general public

shall, on conviction thereof, be sentenced [to ...]

Article 25

Illicit traffic in narcotic drugs

1. An individual who commits or orders the commission of any of the following acts:

- undertaking, organizing, facilitating, financing or encouraging illicit traffic in narcotic drugs on a large scale, whether within the confines of a State or in a transboundary context

shall, on conviction thereof, be sentenced [to ...].

2. For the purposes of paragraph 1, facilitating or encouraging illicit traffic in narcotic drugs includes the acquisition, holding, conversion or transfer of property by an individual who knows that such property is derived from the crime described in this article in order to conceal or disguise the illicit origin of the property.

3. Illicit traffic in narcotic drugs means any production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to internal or international law.

Article 26

Wilful and severe damage to the environment

An individual who wilfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall, on conviction thereof, be sentenced [to ...].